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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 EASTERN DIVISION

11 ANNIE PEARL MURPHY,

12 Plaintiff,

13 v.

14 NANCY A. BERRYHILL, Acting
15 Commissioner of Social Security,¹

16 Defendant.
17
18

Case No. ED CV 15-01588-DFM

MEMORANDUM OPINION
AND ORDER

19 Annie Pearl Murphy (“Plaintiff”) appeals from the Social Security
20 Commissioner’s final decision denying her application for Social Security
21 Disability Insurance Benefits (“DIB”). For the reasons discussed below, the
22 Commissioner’s decision is affirmed and the matter dismissed with prejudice.

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26 ¹ On January 21, 2017, Berryhill became the Acting Social Security
27 Commissioner. Thus, she is automatically substituted as defendant under
28 Federal Rule of Civil Procedure 25(d).

I.

BACKGROUND

Plaintiff applied for DIB on April 5, 2012, alleging disability beginning January 1, 2010. Administrative Record (“AR”) 90, 140-47. After her application was denied, AR 91-95, 98-102, she requested a hearing before an Administrative Law Judge (“ALJ”), AR 105-06. An AJL held a hearing on June 7, 2013, taking testimony from Plaintiff, who was unrepresented, as well as a Vocational Expert (“VE”). AR 31-64.

In a written decision issued January 7, 2014, the ALJ denied Plaintiff’s claim for benefits. AR 13-30. In reaching his decision, the ALJ found that Plaintiff last met the insured status of the Social Security Act on September 30, 2011. AR 18. Through Plaintiff’s date last insured of September 30, 2011, the ALJ found that Plaintiff had the severe impairments of: “polyarthralgia and polymyalgia; lateral epicondylitis of both elbows; DeQuervain’s tendinitis of the bilateral wrists; greater trochanteric bursitis of the hips; degenerative spurring in the right knee; hypothyroidism with thyroid lesions and nodules; headaches; and obesity.” Id. He found that notwithstanding those impairments, Plaintiff retained the residual functional capacity (“RFC”) to perform light work with the following additional limitations: only occasional climbing ramps and stairs, but never climbing ladders, ropes, or scaffolds; only frequent balancing, stooping, kneeling, crouching, crawling, pushing and/or pulling with the upper and lower extremities, and handling and fingering with the bilateral upper extremities; and no exposure to unprotected heights. AR 19. Based on the VE’s testimony, the ALJ found that, through Plaintiff’s date last insured, she could perform her past relevant work as a housekeeping cleaner, both as actually and generally performed, and in the alternative, that a hypothetical person with Plaintiff’s age, education, work experience, and RFC was capable of making a successful adjustment to other work in the national

economy. AR 24-25. As such, he concluded that Plaintiff was not disabled through her date last insured. AR 25-26.

Plaintiff requested review of the ALJ's decision. AR 8-9. On June 15, 2015, the Appeals Council denied review. AR 1-7. This action followed.

II.

DISCUSSION

The parties dispute whether the Commissioner: (1) properly considered the medical evidence of record; and (2) properly assessed Plaintiff's credibility. See Joint Stipulation ("JS") at 3-4.

A. Medical Evidence of Record

Relying extensively on evidence submitted to the Appeals Council after the ALJ's decision, Plaintiff argues that the ALJ erred by failing to impose limitations based on her back and shoulder impairments and by giving "little weight" to her treating physicians' opinions. See JS at 4-12. For the reasons discussed below, the Court disagrees.

1. Relevant Facts

a. Pre-2009 Medical Records Relating to Plaintiff's Injuries, Shoulders, and Back

Plaintiff's Injuries. On May 26, 2003, while working as a hotel laundry attendant, Plaintiff bent down to fold table linens. AR 718. She then lifted a bag of wet linens and felt a sharp pain in her back as she was trying to stand up. AR 696, 718, 747. Plaintiff reported the injury to her supervisor and went to the emergency room. AR 696, 709. She missed work for two days, after which she returned to modified work. AR 709-10, 718-19.

In 2004, Plaintiff was driving a vehicle that was hit on the passenger side. AR 689. She said in a deposition that her lower back hurt as a result of the accident. Id.

On November 8, 2005, Plaintiff slipped and fell on a wet floor during her

1 lunch break. AR 690, 725, 738, 745. As a result of the fall, she felt pain in her
2 shoulders, neck, and under her armpit. AR 690. She also had “a lot of leg
3 pain.” Id. A doctor cleared her to return three days after the fall to modified
4 work. AR 740, 742. According to records from an interview with Plaintiff in
5 December 2006, she was taken off work by her family physician and placed on
6 state disability six months after the fall. See AR 747.²

7 Plaintiff indicated that her car was rear-ended in August 2007 while she
8 waiting at a stop sign. AR 807. She said that the accident “made her entire
9 body hurt.” Id.

10 *Plaintiff's Shoulders.* In May 2006, Plaintiff had an MRI examination of
11 both shoulders. AR 678-79. The images revealed no bony fracture or
12 contusion, intact glenoid labrums, and normally positioned bicipital tendons.
13 Id. The MRI of the left shoulder indicated moderate impingement on the
14 supraspinatus muscle and tendon as well as a tear of the tendon distally. AR
15 678. The MRI of the right shoulder indicated mild to moderate impingement
16 on the supraspinatus muscle and tendon, and a small tear anteriorly and
17 distally. AR 679.

18 On March 23, 2007, Dr. Peter J. Sofia performed decompression surgery
19 on Plaintiff's left shoulder. AR 932-34. On May 9, 2007, Dr. Sofia noted that
20 Plaintiff's left shoulder had “excellent motion” and “very good strength,” but
21 some pain. AR 942. He noted that Plaintiff's right shoulder had full motion
22 and strength, but with pain. Id. He also noted a mildly positive impingement
23 sign, and recommended a steroid injection for her right shoulder. Id. On May
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25 ² Plaintiff indicated that her last day of work was July 2, 2005. AR 747.
26 It appears that her last day of work was actually in 2006, since she stated that
27 “she worked for another six months” after her 2005 slip-and-fall injury, id.,
28 and she also stated in her application for DIB that she last worked in 2006, AR
142.

1 29, 2007, Dr. Sofia noted that Plaintiff “is still pleased with the right shoulder,
2 which was injected previously.” AR 945. She reported that her left shoulder
3 was improving and she was “fairly happy with the result” of the surgery. Id.

4 On August 14, 2007, Dr. Sofia’s examination of Plaintiff’s left shoulder
5 revealed “full active and passive motion” with “very little discomfort,”
6 “excellent strength” with minimal pain, and no sign of impingement. AR 955.
7 He noted that Plaintiff’s right shoulder had an “excellent exam” with “full
8 motion and strength” and “almost no discomfort.” Id. Plaintiff reported that
9 she was “happy with her left shoulder” and had “no trouble” with the right.
10 AR 954. She stated that she could “probably work” and would “go back to
11 work.” Id. Dr. Sofia also opined that Plaintiff “could work at this time.” AR
12 955.

13 *Plaintiff’s Back.* On June 28, 2003, Plaintiff had an MRI examination of
14 her lumbosacral spine. AR 714-15. The MRI showed mild disc height
15 reduction at L3-L4 and mild posterior disc bulging without impingement at
16 L3-L4 and L4-L5. Id. The MRI also showed posterior disc protrusion
17 producing mild left and moderate right lateral recess stenosis at L5-S1 with
18 associated mild right L5 foraminal narrowing. AR 715.

19 A subsequent MRI examination on August 10, 2006, showed disc
20 protrusion at L2-L3, L3-L4, L4-L5, and L5-S1 producing bilateral
21 neuroforaminal encroachment. AR 919-20. The MRI also showed effacement
22 of the L2 exiting nerve roots and S1 transiting nerve roots, and impingement
23 on the L3, L4, and L5 exiting nerve roots. Id. The MRI showed straightening
24 of the lumbar spine with osteophytes throughout. AR 918, 920. The vertebral
25 body heights were maintained with disc desiccation at L3-L4 and L5-S1. Id.

26 b. Physicians’ Opinions

27 On March 22, 2010, Dr. Asheesh Pasi, one of Plaintiff’s treating
28 physicians, completed a check-the-box and fill-in-the-blank Physical Capacities

1 form for Plaintiff. AR 334-38. Dr. Pasi opined that Plaintiff could stand/walk
2 for 2 to 4 hours at one time, and sit for 2 to 4 hours at one time, in an 8-hour
3 workday. AR 336. Dr. Pasi checked a box indicating that Plaintiff is “restricted
4 in using hands/fingers for repetitive motions” due to left shoulder tendonitis
5 and decreased range of motion of her left upper extremities. Id. Dr. Pasi also
6 opined that Plaintiff could occasionally lift/carry 10 pounds and could never
7 lift/carry more than 10 pounds, climb, balance, stoop, kneel, crouch, crawl, or
8 reach. AR 337.

9 On March 8, 2011, Dr. Philip Scheel, another of Plaintiff’s treating
10 physicians, completed the Physical Capacities form. AR 349-51. Dr. Scheel
11 opined that Plaintiff could stand/walk for 0 to 2 hours at one time and 2 to 4
12 hours total in an 8-hour workday. AR 350. He also opined that Plaintiff could
13 sit for 2 to 4 hours at one time and 2 to 4 hours total in an 8-hour workday. Id.
14 Dr. Scheel checked the box indicating that Plaintiff is “restricted in using
15 hands/fingers for repetitive motions” due to chronic left shoulder pain and
16 bilateral wrist pain. Id. He opined that Plaintiff could never lift/carry any
17 weight, climb, balance, stoop, kneel, crouch, crawl, or reach. AR 351. Dr.
18 Scheel noted that Plaintiff would be evaluated by an orthopedist in the next 1
19 to 2 months. Id.

20 On June 27, 2012, Plaintiff was examined by Dr. Vicente R. Bernabe, a
21 consulting orthopedic surgeon. AR 213-18. Dr. Bernabe opined that Plaintiff
22 could walk and stand for 6 hours out of an 8-hour day and sit without
23 restriction. AR 217. He opined that Plaintiff could lift and carry, push and pull,
24 bend, crouch, stoop, crawl, walk on uneven terrain, climb ladders, and work at
25 heights without limitation. Id. He also found that Plaintiff did not have a hand
26 use or fine fingering manipulation impairment. Id.

27 On February 27, 2013, Plaintiff’s treating physician Dr. Alan Pan
28 completed the Physical Capacities form. AR 339-43. Dr. Pan opined that

1 Plaintiff could stand/walk for 0 to 2 hours at one time and for 0 to 2 hours
2 total in an 8-hour workday. AR 341. He also opined that Plaintiff could sit for
3 0 to 2 hours at one time and for 0 to 2 hours total in an 8-hour workday. Id.
4 Dr. Pan checked the box indicating that Plaintiff is “restricted in using
5 hands/fingers for repetitive motions” due to arthritis in both hands. Id. Dr.
6 Pan opined that Plaintiff could occasionally lift/carry 10 pounds and could
7 never lift/carry more than 10 pounds, climb, balance, stoop, kneel, crouch,
8 crawl, or reach. AR 342.

9 c. Alleged Amendment of Onset Date

10 At the 2013 hearing, the ALJ explained to Plaintiff that if he found that
11 she was disabled, he would “have to also determine the date that [her]
12 disability began.” AR 35. He then asked, “you’re alleging that your disability
13 began on January 1st, 2010.” Id. Plaintiff responded, “Yes.” Id.
14 On July 16, 2014, Plaintiff’s counsel sent a letter to the Appeals Council, AR
15 205, along with medical records relating to Plaintiff’s treatment for a work-
16 related accident on May 26, 2003, AR 674-956. The letter stated, “We hereby
17 formally move to amend her [alleged onset date] to May 26, 2003.” AR 205.
18 Plaintiff’s counsel argued that “[w]ith this new evidence, it is clear that the
19 statements made by [Plaintiff] are supported by and consistent with the
20 objective evidence, and the treating physician statements are also supported by
21 objective evidence.” Id. The Appeals Council considered the letter and
22 additional medical records. See AR 2, 5-6. The Appeals Council “found that
23 this information does not provide a basis for changing the [ALJ’s] decision.”
24 AR 2.

25 **2. Analysis**

26 The Court begins with two preliminary issues before reaching Plaintiff’s
27 contentions that the ALJ erred in considering the medical evidence. First, the
28 Court agrees with Plaintiff that it must consider whether the ALJ’s decision

1 can stand notwithstanding the new evidence submitted to the Appeals Council.
2 Social Security Administration regulations “permit claimants to submit new
3 and material evidence to the Appeals Council and require the Council to
4 consider that evidence in determining whether to review the ALJ’s decision, so
5 long as the evidence relates to the period on or before the ALJ’s decision.”
6 Brewes v. Comm’r of Soc. Sec. Admin., 682 F.3d 1157, 1162 (9th Cir. 2012)
7 (citing 20 C.F.R. § 404.970(b)). “[W]hen the Appeals Council considers new
8 evidence in deciding whether to review a decision of the ALJ, that evidence
9 becomes part of the administrative record, which the district court must
10 consider when reviewing the Commissioner’s final decision for substantial
11 evidence.” Id. at 1163. “Remand is necessary where there is a ‘reasonable
12 possibility’ that the new evidence might change the outcome of the
13 administrative hearing.” Borrelli v. Comm’r of Soc. Sec., 570 F. App’x 651,
14 652 (9th Cir. 2014) (quoting Booz v. Sec’y of Health & Human Servs., 734
15 F.2d 1378, 1380-81 (9th Cir. 1984)).

16 Second, the Court rejects Plaintiff’s contention that it must review the
17 ALJ’s decision using the amended onset date of May 26, 2003. Plaintiff did not
18 seek to amend her onset date at the administrative hearing; to the contrary, she
19 confirmed that her disability began on January 1, 2010. AR 35. Later, in her
20 letter to the Appeals Council requesting review of the ALJ’s decision, Plaintiff
21 submitted new evidence for consideration and also requested to amend her
22 onset date to May 26, 2003. AR 205, 674, 956. The Appeals Council evaluated
23 Plaintiff’s new evidence and denied her request for review. AR 1-3. The
24 Appeals Council did not expressly address Plaintiff’s request to amend, and
25 adopted the ALJ’s decision as “the final decision of the Commissioner.” See
26 AR 1-7. The Court will review Plaintiff’s arguments using the January 1, 2010
27 onset date used by the ALJ after Plaintiff confirmed it at the administrative
28 hearing. See Anderson v. Comm’r of Soc. Sec. Admin., No. 13-145, 2014 WL

1 346296, at *6 (N.D. Ohio Jan. 30, 2014) (deciding to use onset date used by
 2 ALJ where Appeals Council did not address claimant's request to amend
 3 alleged onset date); Freeman v. Comm'r of Soc. Sec., No. 07-536, 2008 WL
 4 2074019, at *1 n.2 (W.D. Mich. May 14, 2008) (same).³

5 a. Plaintiff Has Not Demonstrated that Shoulder or Back
 6 Problems Had More Than a Minimal Effect on Her Ability
 7 to Perform Basic Work Activities

8 Plaintiff argues that despite "substantial documentation of Plaintiff's
 9 bilateral shoulder impairments," the ALJ "fail[ed] to find any impairments
 10 involving Plaintiff's shoulders." JS at 6. Plaintiff further contends that the
 11 ALJ's finding that her back impairment was not severe "is clearly erroneous
 12 and unsupported by the medical evidence." Id. at 7. The Court disagrees.

13 The Social Security Act defines "disability" as the "inability to engage in
 14 any substantial gainful activity by reason of any medically determinable
 15 physical or mental impairment which can be expected to result in death or
 16 which has lasted or can be expected to last for a continuous period of not less
 17 than 12 months." 42 U.S.C. § 423(d)(1)(A). At step two of the sequential
 18 evaluation process, the claimant has the burden to show that she has one or
 19 more "severe" medically determinable impairments that meets the "duration
 20 requirement." See Bowen v. Yuckert, 482 U.S. 137, 146 (1987) (claimant bears
 21 burden at step two); 20 C.F.R. § 404.1520(a)(4)(ii) (claimant not disabled at
 22 step two if she does "not have a severe medically determinable physical or
 23 mental impairment that meets the duration requirement").

24
 25 ³ Moreover, the record contains at least some information at odds with a
 26 2003 onset date. As previously discussed, the record indicates that Plaintiff
 27 returned to work after both her May 26, 2003 back injury and November 8,
 28 2005 shoulder injury, albeit with modified duties, until she was taken off work
 in July 2006 by her doctor. See AR 725, 747.

1 The existence of a severe impairment is demonstrated when the evidence
2 establishes that an impairment has more than a minimal effect on an
3 individual's ability to perform basic work activities. Webb v. Barnhart, 433
4 F.3d 683, 686-87 (9th Cir. 2005); Smolen v. Chater, 80 F.3d 1273, 1290 (9th
5 Cir. 1996); 20 C.F.R. § 404.1521(a). The regulations define "basic work
6 activities" as "the abilities and aptitudes necessary to do most jobs," which
7 include physical functions such as walking, standing, sitting, pushing, and
8 carrying, and mental functions such as understanding and remembering
9 simple instructions; responding appropriately in a work setting; and dealing
10 with changes in a work setting. 20 C.F.R. § 404.1521(b). The inquiry at this
11 stage is "a de minimis screening device to dispose of groundless claims."
12 Smolen, 80 F.3d at 1290 (citing Yuckert, 482 U.S. at 153-54). An impairment
13 is not severe if it is only a slight abnormality with "no more than a minimal
14 effect on an individual's ability to work." SSR 85-28, 1985 WL 56856, at *3
15 (1985); Yuckert v. Bowen, 841 F.2d 303, 306 (9th Cir. 1988). A "finding of no
16 disability at step two" may be affirmed where there is a "total absence of
17 objective evidence of severe medical impairment." Webb, 433 F.3d at 688
18 (reversing a step two determination "because there was not substantial
19 evidence to show that [the claimant's] claim was 'groundless'").

20 Here, the record does not establish that either of Plaintiff's shoulders had
21 more than a minimal effect on her ability to perform basic work activities after
22 January 1, 2010. The additional evidence submitted by Plaintiff reflects that
23 before her surgery on March 23, 2007, she was limited due to left-shoulder
24 pain. See AR 678. This evidence also reflects that Plaintiff's right shoulder was
25 somewhat limited due to pain before she was given a steroid injection in May
26 2007. See AR 679, 942 (May 2007 note indicating Plaintiff's right shoulder had
27 full range of motion and strength, but with pain), 945. However, as of August
28 14, 2007, both of Plaintiff's shoulders had improved. Dr. Sofia noted that

1 Plaintiff's left shoulder had full motion and excellent strength with minimal
2 pain. AR 955. He also noted that her right shoulder had an "excellent exam"
3 with "full motion and strength" and "almost no discomfort." Id. Plaintiff told
4 Dr. Sofia that she was "happy with her left shoulder, had "no trouble" with the
5 right, and could "probably work." AR 954.

6 The only records from the relevant time period Plaintiff points to as
7 evidence of a severe shoulder impairment are the opinions of her treating
8 physicians, Dr. Pasi and Dr. Scheel. As discussed further below, the ALJ
9 properly discounted Dr. Pasi's and Dr. Scheel's opinions for several reasons,
10 including that they were not supported by the objective evidence. See AR 23.
11 As the ALJ noted, Plaintiff had "complaints of left shoulder pain" on March
12 22, 2010, AR 21 (citing AR 261), but an October 14, 2011 x-ray of her left
13 shoulder was "normal," id. (citing AR 296, 574). The ALJ also considered the
14 opinion of Dr. Bernabe, the consultative orthopedic examiner, who noted that
15 Plaintiff had full and painless range of motion in both shoulders, with no sign
16 of impingement or instability. See AR 23, 215.⁴

17 Nor did Plaintiff meet her burden of demonstrating a severe back
18 impairment. As the ALJ acknowledged, Plaintiff had "significant treatment for
19 her back problems" before January 1, 2010, but "the evidence shows only
20 sporadic mention of back problems with minimal treatment that does not
21 support allegations that these symptoms caused significant limitations during

22
23 ⁴ Some evidence indicates that Plaintiff's right shoulder began to
24 deteriorate after her date last insured. The doctor who performed an MRI
25 examination of Plaintiff's right shoulder on January 10, 2013, noted Plaintiff's
26 "history" was "[s]houlder pain and limited motion for nine months." AR 556.
27 On April 17, 2013, Plaintiff's physical therapist noted that Plaintiff reported
28 that her right shoulder pain "started insidiously" in February 2012. AR 463.
Plaintiff does not, however, cite any evidence showing that she was limited by
her right shoulder during the relevant time period.

1 the relevant period.” AR 18. On July 15, 2010, Plaintiff complained of back
 2 pain and was prescribed medication. Id. (citing AR 260). However, Plaintiff
 3 “had no further significant treatment for back pain until she fell and hurt her
 4 back on March 14, 2011 and was simply seeking medication refills.” Id. (citing
 5 AR 251). Indeed, Plaintiff testified at the hearing that her back had been
 6 treated with just pain medication since 2007. AR 51. An x-ray shortly after the
 7 relevant period on December 27, 2011 showed some straightening of the
 8 cervical curve with “no other abnormalities.” AR 18-19 (citing AR 292); see
 9 also AR 570. Again, Plaintiff relies heavily on the properly discounted
 10 opinions of Dr. Pasi and Dr. Scheel. See JS at 9. Accordingly, the Court finds
 11 that Plaintiff has not met her burden of showing that she had a severe shoulder
 12 or back impairment.

13 b. The ALJ Did Not Err in Giving Little Weight to the
 14 Treating Physicians’ Opinions

15 Plaintiff contends that “only after her worker’s compensation case is
 16 considered and properly developed do the limitations expressed by the treating
 17 physicians Drs. Pasi, Scheel, and Pan make sense,” because their opinions are
 18 “completely consistent with and supported by the objective medical findings
 19 and opinions expressed by worker’s compensation physicians.” JS at 9.

20 Three types of physicians may offer opinions in Social Security cases:
 21 those who treated the plaintiff, those who examined but did not treat the
 22 plaintiff, and those who did neither. See 20 C.F.R. § 404.1527(c); Lester v.
 23 Chater, 81 F.3d 821, 830 (9th Cir. 1995) (as amended Apr. 9, 1996). A treating
 24 physician’s opinion is generally entitled to more weight than an examining
 25 physician’s opinion, which is generally entitled to more weight than a
 26 nonexamining physician’s. Lester, 81 F.3d at 830. When a treating or
 27 examining physician’s opinion is uncontroverted by another doctor, it may be
 28 rejected only for “clear and convincing reasons.” See Carmickle v. Comm’r,

1 Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008) (citing Lester, 81 F.3d
 2 at 830-31). Where such an opinion is contradicted, the ALJ must provide only
 3 “specific and legitimate reasons” for discounting it. Id.; see also Garrison v.
 4 Colvin, 759 F.3d 995, 1012 (9th Cir. 2014). Moreover, “[t]he ALJ need not
 5 accept the opinion of any physician, including a treating physician, if that
 6 opinion is brief, conclusory, and inadequately supported by clinical findings.”
 7 Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002). The weight accorded
 8 to a physician’s opinion depends on whether it is consistent with the record
 9 and accompanied by adequate explanation, the nature and extent of the
 10 treatment relationship, and the doctor’s specialty, among other things. 20
 11 C.F.R. § 404.1527(c).

12 The ALJ provided specific and legitimate reasons for giving “little
 13 weight” to Dr. Pasi’s, Dr. Scheel’s, and Dr. Pan’s controverted opinions. AR
 14 23. First, the ALJ noted that their opinions were set forth in “checklist-style
 15 forms” that “appear to have been completed as an accommodation to”
 16 Plaintiff and “include only conclusions regarding functional limitations
 17 without any rationale for those conclusions.” Id. Despite finding that Plaintiff
 18 had extreme physical limitations, Dr. Pasi, Dr. Scheel, and Dr. Pan cited no
 19 supporting medical evidence, test results, or clinical findings in their Physical
 20 Capacities forms. See AR 334-38, 338-43, 349-51. Nor does Plaintiff point to
 21 any clinical findings in their treatment notes that would support such
 22 limitations. And to the extent Dr. Pasi, Dr. Scheel, and Dr. Pan based their
 23 opinions on Plaintiff’s own reports of her symptoms, the ALJ provided clear
 24 and convincing reasons for discounting Plaintiff’s subjective complaints for the
 25 reasons discussed below. As such, the ALJ permissibly discounted Dr. Pasi’s,
 26 Dr. Scheel’s, and Dr. Pan’s opinions on this basis. See Thomas, 278 F.3d at
 27 957 (stating that ALJ “need not accept the opinion of . . . a treating physician”
 28 if it is “brief, conclusory, and inadequately supported by clinical findings”);

1 Tonapetyan v. Holder, 242 F.3d 1144, 1149 (9th Cir. 2001) (holding that when
2 ALJ properly discounted claimant's credibility, he was "free to disregard"
3 doctor's opinion that was premised on claimant's subjective complaints).

4 Second, the ALJ found that Dr. Pasi's, Dr. Scheel's, and Dr. Pan's
5 opinions were not supported by the objective evidence and "the course of
6 treatment pursued by these doctors have not been consistent with what one
7 would expect if [Plaintiff] was truly disabled." AR 23. Plaintiff counters that
8 "the opinions expressed by these three treating physicians are consistent with
9 and supported by the totality of medical evidence of record . . . which now
10 includes the entire worker's compensation record." JS at 12. However, other
11 than general references to "surgical reports," "epidural reports," and "MRI
12 findings," see id., Plaintiff does not identify any specific medical records nor
13 does she explain which functional limitations such records support. Moreover,
14 the ALJ extensively reviewed the medical evidence and noted that "the
15 positive objective clinical and diagnostic findings" did not support more
16 restrictive functional limitations than those assessed in Plaintiff's RFC. See AR
17 21. As the ALJ noted, x-rays of Plaintiff's knees and hands on September 23,
18 2010 revealed "no bony abnormalities." AR 21 (citing AR 303-06, 582-85); see
19 also AR 258 & 444 (October 2010 progress note indicating "negative" results
20 of x-rays of both knees and hands). The ALJ noted that x-rays of Plaintiff's left
21 shoulder, wrist, and elbow on October 14, 2011 were "normal." AR 21 (citing
22 AR 296-98, 574-76). The ALJ also noted that diagnostic imaging of Plaintiff's
23 right knee on January 4, 2012 showed "minimal degenerative spurring at the
24 medial tibial condyle, but was otherwise normal." AR 21-22 (citing AR 290,
25 569). The ALJ noted that Plaintiff had a "normal" CT head scan on May 30,
26 2012. AR 22 (citing 567). The ALJ further noted that Plaintiff's
27 hypothyroidism was managed by medication. Id. (citing AR 321, 370).
28 Likewise, the record reflects that Plaintiff's pain symptoms were treated with

over-the-counter and prescription medication during the relevant time period. See, e.g., AR 427, 429-36, 439-40, 444-50. It was permissible for the ALJ to discount the opinions of Dr. Pasi, Dr. Scheel, and Dr. Pan on this basis. See Thomas, 278 F.3d at 957; Senko v. Astrue, 279 F. App'x 509, 511 (9th Cir. 2008) (finding that ALJ gave several “clear and convincing” reasons for rejecting treating doctor’s opinion, including that his opinion was not supported by his treatment notes or other evidence in record and that treatment notes showed that conditions responded to medication).

B. Plaintiff’s Credibility

Plaintiff contends that the ALJ failed to give legally sufficient reasons for discounting her credibility. JS at 25-30. For the reasons discussed below, the Court disagrees.

1. Applicable Law

To determine whether a claimant’s testimony about subjective pain or symptoms is credible, an ALJ must engage in a two-step analysis. Lingenfelter v. Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2007)). “First, the ALJ must determine whether the claimant has presented objective medical evidence of an underlying impairment ‘which could reasonably be expected to produce the alleged pain or other symptoms alleged.’” Id. at 1036 (citation omitted). Once a claimant does so, the ALJ “may not reject a claimant’s subjective complaints based solely on a lack of objective medical evidence to fully corroborate the alleged severity of pain.” Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991) (en banc).

If the claimant meets the first step and there is no affirmative evidence of malingering, the ALJ must provide specific, clear and convincing reasons for discrediting a claimant’s complaints. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883 (9th Cir. 2006) (citing Smolen, 80 F.3d at 1283-84). “General findings are insufficient; rather, the ALJ must identify what testimony is not credible

1 and what evidence undermines the claimant's complaints." Brown-Hunter v.
 2 Colvin, 806 F.3d 487, 493 (9th Cir. 2015) (citation omitted). The ALJ may
 3 consider, among other factors, a claimant's reputation for truthfulness,
 4 inconsistencies either in her testimony or between her testimony and her
 5 conduct, unexplained or inadequately explained failure to seek treatment or
 6 follow a prescribed course of treatment, her work record, and her daily
 7 activities. Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir. 1997);
 8 Smolen, 80 F.3d at 1283-84 & n.8. If the ALJ's credibility finding is supported
 9 by substantial evidence in the record, the reviewing court "may not engage in
 10 second-guessing." Thomas, 278 F.3d at 959.

11 **2. Relevant Facts**

12 At the hearing, Plaintiff testified that she lives with her husband and 13-
 13 year-old daughter. AR 44. Plaintiff said that she is her daughter's primary
 14 caretaker. Id. Her husband is disabled, and his mother is his primary caretaker.
 15 AR 45. Plaintiff testified that her mother-in-law, who lives about 30 minutes
 16 away, comes to help them five days a week. AR 45-46. Plaintiff also has a 28-
 17 year-old daughter who "comes over all the time and help[s] out." Id. Plaintiff
 18 said that her mother-in-law "do[es] everything," and if her husband needs
 19 something, one of their daughters will "go and get it for him." AR 45. Plaintiff
 20 testified that her mother-in-law takes care of the household and upkeep of the
 21 house, including laundry, cooking, and cleaning. AR 46. Plaintiff has a driver's
 22 license and drives "four days a week," usually to the store and her daughter's
 23 bus stop. Id. Plaintiff's daughter accompanies Plaintiff when she shops for
 24 groceries. Id.

25 Plaintiff testified that she has joint and muscle pain, which primarily
 26 affects her legs and back. AR 47-48. "[I]t mess[es] with [her] walk" and
 27 "keep[s] [her] from doing different stuff, washing dishes, cleaning the house."
 28 AR 48. Plaintiff's whole right arm and fingers lock up. Id. She takes pain

1 medication twice a day and has also gone to physical therapy. AR 47-48.
2 Plaintiff has a cyst in the back of her right leg and “the pain just hit [her] all of
3 a sudden” when she is walking sometimes, and she feels like she is “about to
4 fall from that pain, it’s like a sharp pain in the back.” AR 50. Plaintiff reported
5 that she has a herniated disc that affects her left side, and when she tries to
6 clean or mop, “it goes all the way into the thigh, and it’s like a lot of pressure
7 there, pain in there.” AR 50-51. Plaintiff’s back has been treated only with pain
8 medication since 2007. AR 51. She also takes pain medication for headaches.
9 AR 51-52. Plaintiff has to exercise her neck because of stiffness, and recently
10 went to urgent care a few times to get a shot for the pain. AR 52-53.

11 Plaintiff testified that “it’s hard” to lift and carry, and she “can’t lift
12 nothing heavy.” AR 54-55. When she tries to use a spoon or cut up food, she
13 has “a lot of tingling in [her] fingers.” AR 55. She said that if she stands at the
14 kitchen sink for a long time to “try to wash dishes, all the pressure goes from
15 the . . . back into the left leg into the thigh.” Id. At the end of the hearing,
16 Plaintiff asserted,

17 . . . I just wanted to say I’m not able to do housekeeping or
18 cleaning or any kind of job. Because if I’m—when I’m at home
19 and I try to do—it’s very physical work, it hurts a lot. It’s all in my
20 back, my hands, my arms, my right arm is always locking up on
21 me, my fingers, they cramps up. So I don’t—I’m not able to do
22 any kind of work.

23 AR 62.

24 **3. Discussion**

25 As an initial matter, the ALJ credited many of Plaintiff’s subjective
26 complaints, as reflected in the “limited light limitations adopted” in her RFC.
27 AR 24. The ALJ also noted that he had “generously consider[ed] [Plaintiff’s]
28 subjective complaints.” Id. To the extent the ALJ partially discredited

1 Plaintiff's testimony and allegations, AR 20-21, he gave clear and convincing
2 reasons for doing so.⁵

3 First, the ALJ found that "the evidence submitted does not support the
4 severity of symptoms alleged." AR 20. As discussed above, x-rays and other
5 diagnostic imaging during the relevant time period yielded mostly normal
6 results. Dr. Bernabe noted that Plaintiff had normal ranges of motion, intact
7 motor strength and sensation, and normal gait. See AR 215-16. The ALJ
8 permissibly relied on this evidence to discount Plaintiff's allegations of
9 debilitating functional limitations, such as her claims that she has difficulty
10 walking, AR 47-48, 50, and "it's hard" for her to lift and carry anything, AR
11 54-55. See Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir. 2005) ("Although
12 lack of medical evidence cannot form the sole basis for discounting pain
13 testimony, it is a factor that the ALJ can consider in his credibility analysis.");
14 Carmickle, 533 F.3d at 1161 ("Contradiction with the medical record is a
15 sufficient basis for rejecting the claimant's subjective testimony."); SSR 16-3p,
16 2016 WL 1119029, at *4 (Mar. 16, 2016) ("[O]bjective medical evidence is a
17 useful indicator to help make reasonable conclusions about the intensity and

18 ⁵ In making his credibility finding, the ALJ did not cite any evidence of
19 malingering. The Court notes that, on November 29, 2005, an examining
20 physician noted as follows:

21 Supine straight leg raising was achieved to 90 degrees and
22 associated with pain in the back, but seated straight leg raising,
23 which is the same maneuver, which achieved 90 degrees, resulted
24 in no pain, which raises a red flag as the movements of forward
25 flexion and supine and seated straight leg raising are the same
 movements done in different positions and should register the
 same responses.

26 AR 732. On June 4, 2008, a different examining physician noted that Plaintiff
27 "only performed 10% of a full squat" and "[i]t did not appear she was putting
28 forth her best effort." AR 656, 820.

1 persistence of symptoms, including the effects those symptoms may have on
2 the ability to perform work-related activities.”).

3 Second, the ALJ found that, despite Plaintiff’s allegedly debilitating
4 symptoms, her daily activities could be “quite demanding both physically and
5 emotionally.” AR 21. Plaintiff claimed that she was so debilitated by her
6 medical conditions that she was, for example, unable to care for her disabled
7 husband, wash dishes, clean the house, or use a spoon without difficulty. But
8 Plaintiff was the primary caretaker of her 13-year-old daughter, she drove four
9 times a week, and shopped for groceries with her daughter. The ALJ
10 permissibly discounted Plaintiff’s credibility based on the conflict between her
11 alleged limitations and her daily activities. See Molina v. Astrue, 674 F.3d
12 1104, 1112 (9th Cir. 2012) (holding that ALJ may discredit claimant’s
13 testimony when “claimant engages in daily activities inconsistent with the
14 alleged symptoms” (citing Lingenfelter, 504 F.3d at 1040)); id. (“Even where
15 those [daily] activities suggest some difficulty functioning, they may be
16 grounds for discrediting the claimant’s testimony to the extent that they
17 contradict claims of a totally debilitating impairment.”).

18 The ALJ also noted that the treatment Plaintiff received “has been
19 essentially routine and conservative in nature.” AR 20. As previously
20 discussed, the record reflects that Plaintiff’s symptoms were treated with over-
21 the-counter and prescription pain medication during the relevant time period.
22 See, e.g., AR 427, 429-36, 439-40, 444-50. Plaintiff also testified at the hearing
23 that her leg and back pain have been routinely treated with pain medication
24 and physical therapy. AR 47-48, 51. She takes pain medication for tendonitis,
25 which affects her arms, wrist, and fingers. AR 48. Plaintiff testified that pain
26 medication “helps” with her headaches. AR 52. A conservative treatment
27 history is a legitimate basis for an ALJ to discount a claimant’s credibility. See
28 Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir. 2008); Parra v. Astrue,

1 481 F.3d 742, 751 (9th Cir. 2007) (noting that evidence of conservative
2 treatment is sufficient to discount claimant's testimony regarding severity of
3 impairment).


4 Plaintiff contends that her treatment history was not conservative, noting
5 that she "has undergone multiple surgical procedures including epidurals and
6 shoulder surgery." See JS at 26.⁶ This appears to refer to treatment Plaintiff
7 received before the onset date alleged in her application. As discussed above,
8 the record reflects that Plaintiff's left shoulder improved post-surgery. But even
9 if the ALJ erred in analyzing Plaintiff's treatment history, any error was
10 harmless because he provided two other reasons, both of which were supported
11 by substantial evidence, for discounting Plaintiff's subjective complaints. See
12 Carmickle, 533 F.3d at 1162 ("So long as there remains 'substantial evidence
13 supporting the ALJ's conclusions on . . . credibility' and the error 'does not
14 negate the validity of the ALJ's ultimate [credibility] conclusion,' such is
15 deemed harmless and does not warrant reversal" (alterations in original)).

16 III.

17 CONCLUSION

18 For the reasons stated above, the decision of the Social Security
19 Commissioner is AFFIRMED and the action is DISMISSED with prejudice.

20
21 Dated: March 31, 2017

22 
23 DOUGLAS F. McCORMICK
24 United States Magistrate Judge
25

26 ⁶ Plaintiff also testified at the hearing that months after her date last
27 insured, she got "some kind of shot" for neck pain a few times at urgent care.
28 See AR 52-53.